

SB 201-2  
(LC 1091)  
3/23/21 (HE/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 201**

1 On page 1 of the printed bill, line 2, delete “creating new provisions;”.

2 In line 3, delete “163.149.”.

3 Delete lines 5 through 29 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 813.010 is amended to read:

5 “813.010. (1) A person commits the offense of driving while under the in-  
6 fluence of intoxicants if the person drives a vehicle while the person:

7 “(a) Has 0.08 percent or more by weight of alcohol in the blood of the  
8 person as shown by chemical analysis of the breath or blood of the person  
9 made under ORS 813.100, 813.140 or 813.150;

10 “(b) Is under the influence of intoxicating liquor, cannabis, a controlled  
11 substance or an inhalant; [or]

12 “(c) Is under the influence of any combination of intoxicating liquor,  
13 cannabis, a controlled substance and an inhalant[.]; or

14 **“(d) Within two hours after driving a vehicle, and without con-  
15 suming alcohol in the intervening time period, has 0.08 percent or  
16 more by weight of alcohol in the blood of the person, as shown by  
17 chemical analysis of the breath or blood of the person made under  
18 ORS 813.100, 813.140 or 813.150.**

19 “(2) A person may not be convicted of driving while under the influence  
20 of intoxicants on the basis of being under the influence of a controlled sub-  
21 stance or an inhalant unless the fact that the person was under the influence

1 of a controlled substance or an inhalant is pleaded in the accusatory in-  
2 strument and is either proved at trial or is admitted by the person through  
3 a guilty plea.

4 “(3) A person convicted of the offense described in this section is subject  
5 to ORS 813.020 in addition to this section.

6 “(4) Except as provided in subsection (5) of this section, the offense de-  
7 scribed in this section, driving while under the influence of intoxicants, is  
8 a Class A misdemeanor and is applicable upon any premises open to the  
9 public.

10 “(5)(a) Driving while under the influence of intoxicants is a Class C fel-  
11 ony if the current offense was committed in a motor vehicle and the person  
12 has, at least three times in the 10 years prior to the date of the current of-  
13 fense, been convicted of, or been found to be within the jurisdiction of the  
14 juvenile court for an act that if committed by an adult would be, any of the  
15 following offenses in any combination:

16 “(A) Driving while under the influence of intoxicants in violation of **this**  
17 **section**[:].

18 “[*i*] *This section; or*]

19 “[*ii*] **(B)** The statutory counterpart to this section in another jurisdic-  
20 tion.

21 “[*B*] **(C)** A driving under the influence of intoxicants offense in another  
22 jurisdiction that involved the impaired driving or operation of a vehicle, an  
23 aircraft or a boat due to the use of intoxicating liquor, cannabis, a controlled  
24 substance, an inhalant or any combination thereof.

25 “[*C*] **(D)** A driving offense in another jurisdiction that involved operat-  
26 ing a vehicle, an aircraft or a boat while having a blood alcohol content  
27 above that jurisdiction’s permissible blood alcohol content.

28 “(b) For the purposes of paragraph (a) of this subsection, a conviction or  
29 adjudication for a driving offense in another jurisdiction based solely on a  
30 person under 21 years of age having a blood alcohol content that is lower

1 than the permissible blood alcohol content in that jurisdiction for a person  
2 21 years of age or older does not constitute a prior conviction or adjudi-  
3 cation.

4 “(6) In addition to any other sentence that may be imposed, the court  
5 shall impose one or more of the following fines on a person convicted of  
6 driving while under the influence of intoxicants as follows:

7 “(a) For a person’s first conviction, a minimum of \$1,000.

8 “(b) For a person’s second conviction, a minimum of \$1,500.

9 “(c) For a person’s third or subsequent conviction, a minimum of \$2,000  
10 if the person is not sentenced to a term of imprisonment.

11 “(d)(A) For a person who drives a vehicle while the person has 0.15 per-  
12 cent or more by weight of alcohol in the blood of the person as shown by  
13 chemical analysis of the breath or blood of the person made under ORS  
14 813.100, 813.140 or 813.150, a minimum of \$2,000.

15 “(B) For a person who, within two hours after driving a vehicle, and  
16 without consuming alcohol in the intervening time period, has 0.15  
17 percent or more by weight of alcohol in the blood of the person, as  
18 shown by chemical analysis of the breath or blood of the person made  
19 under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

20 “(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a  
21 court may impose on a person convicted of driving while under the influence  
22 of intoxicants if:

23 “(a) The current offense was committed in a motor vehicle; and

24 “(b) There was a passenger in the motor vehicle who was under 18 years  
25 of age and was at least three years younger than the person driving the  
26 motor vehicle.

27 “**SECTION 2.** ORS 813.011 is amended to read:

28 “813.011. (1) Driving under the influence of intoxicants under ORS 813.010  
29 shall be a Class C felony if **at least two times in the 10 years prior to**  
30 **the date of the current offense** the defendant has been convicted of [*driv-*

1 *ing under the influence of intoxicants in violation of ORS 813.010, or its stat-*  
2 *utory counterpart in another jurisdiction, at least two times in the 10 years*  
3 *prior to the date of the current offense.] any of the following offenses in*  
4 **any combination:**

5 **“(a) Driving under the influence of intoxicants in violation of ORS**  
6 **813.010, or its statutory counterpart in another jurisdiction.**

7 **“(b) A driving under the influence of intoxicants offense in another**  
8 **jurisdiction that involved the impaired driving or operation of a vehi-**  
9 **cle, an aircraft or a boat due to the use of intoxicating liquor,**  
10 **cannabis, a controlled substance, an inhalant or any combination**  
11 **thereof.**

12 **“(c) An offense in another jurisdiction that involved driving or op-**  
13 **erating a vehicle, an aircraft or a boat while having a blood alcohol**  
14 **content above that jurisdiction’s permissible blood alcohol content.**

15 **“(2) Once a person has been sentenced for a Class C felony under this**  
16 **section, the 10-year time limitation is eliminated and any subsequent episode**  
17 **of driving under the influence of intoxicants shall be a Class C felony re-**  
18 **gardless of the amount of time which intervenes.**

19 **“(3) Upon conviction for a Class C felony under this section, the person**  
20 **shall be sentenced to a mandatory minimum term of incarceration of 90 days,**  
21 **without reduction for any reason.**

22 **“SECTION 3. ORS 813.300 is amended to read:**

23 **“813.300. (1) At the trial of any civil or criminal action, suit or proceeding**  
24 **arising out of the acts committed by a person driving a motor vehicle while**  
25 **under the influence of intoxicants, if the amount of alcohol in the person’s**  
26 **blood at the time alleged is less than 0.08 percent by weight of alcohol as**  
27 **shown by chemical analysis of the person’s breath or blood, it is indirect**  
28 **evidence that may be used with other evidence, if any, to determine whether**  
29 **or not the person was then under the influence of intoxicants.**

30 **“(2) Not less than 0.08 percent by weight of alcohol in a person’s blood**

1 constitutes being under the influence of intoxicating liquor.

2 “(3) Notwithstanding subsection (2) of this section, for purposes of the  
3 Motorist Implied Consent Law as defined in ORS 801.010, for a person who  
4 is under 21 years of age, any amount of alcohol in the blood constitutes being  
5 under the influence of intoxicating liquor.

6 “(4) Percent by weight of alcohol in the blood shall be based upon grams  
7 of alcohol per 100 milliliters of blood or based upon grams of alcohol per 210  
8 liters of breath.

9 “(5) **ORS 813.010 (1)(d) may not be construed to limit the**  
10 **admissibility of any evidence of the amount of alcohol in a person’s**  
11 **blood as shown by chemical analysis of the person’s breath or blood,**  
12 **in any civil or criminal action, suit or proceeding arising out of the**  
13 **acts committed by the person driving a vehicle while under the influ-**  
14 **ence of intoxicants.**

15 “**SECTION 4.** ORS 163.118 is amended to read:

16 “163.118. (1) Criminal homicide constitutes manslaughter in the first de-  
17 gree when:

18 “(a) It is committed recklessly under circumstances manifesting extreme  
19 indifference to the value of human life;

20 “(b) It is committed intentionally by a defendant under the influence of  
21 extreme emotional disturbance as provided in ORS 163.135, which constitutes  
22 a mitigating circumstance reducing the homicide that would otherwise be  
23 murder to manslaughter in the first degree and need not be proved in any  
24 prosecution;

25 “(c) A person recklessly causes the death of a child under 14 years of age  
26 or a dependent person, as defined in ORS 163.205, and:

27 “(A) The person has previously engaged in a pattern or practice of assault  
28 or torture of the victim or another child under 14 years of age or a dependent  
29 person; or

30 “(B) The person causes the death by neglect or maltreatment, as defined

1 in ORS 163.115; or

2 “(d) It is committed recklessly or with criminal negligence by a person  
3 operating a motor vehicle while under the influence of intoxicants in vio-  
4 lation of ORS 813.010 and:

5 “(A) [*The person has at least three previous convictions for driving while*  
6 *under the influence of intoxicants under ORS 813.010, or its statutory*  
7 *counterpart in any jurisdiction, in the 10 years prior to the date of the current*  
8 *offense; or]* **In the 10 years prior to the date of the current offense the**  
9 **person has been convicted of at least three of any of the following of-**  
10 **fenses in any combination:**

11 **“(i) Driving under the influence of intoxicants in violation of ORS**  
12 **813.010, or its statutory counterpart in another jurisdiction.**

13 **“(ii) A driving under the influence of intoxicants offense in another**  
14 **jurisdiction that involved the impaired driving or operation of a vehi-**  
15 **cle, an aircraft or a boat due to the use of intoxicating liquor,**  
16 **cannabis, a controlled substance, an inhalant or any combination**  
17 **thereof.**

18 **“(iii) An offense in another jurisdiction that involved driving or**  
19 **operating a vehicle, an aircraft or a boat while having a blood alcohol**  
20 **content above that jurisdiction’s permissible blood alcohol content; or**

21 “(B)(i) The person has a previous conviction for any of the crimes de-  
22 scribed in subsection (2) of this section, or their statutory counterparts in  
23 any jurisdiction; and

24 “(ii) The victim’s serious physical injury in the previous conviction was  
25 caused by the person driving a motor vehicle.

26 “(2) The previous convictions to which subsection (1)(d)(B) of this section  
27 applies are:

28 “(a) Assault in the first degree under ORS 163.185;

29 “(b) Assault in the second degree under ORS 163.175; or

30 “(c) Assault in the third degree under ORS 163.165.

1 “(3) Manslaughter in the first degree is a Class A felony.

2 “(4) It is an affirmative defense to a charge of violating:

3 “(a) Subsection (1)(c)(B) of this section that the victim was a dependent  
4 person who was at least 18 years of age and was under care or treatment  
5 solely by spiritual means pursuant to the religious beliefs or practices of the  
6 dependent person or the guardian of the dependent person.

7 “(b) Subsection (1)(d)(B) of this section that the defendant was not under  
8 the influence of intoxicants at the time of the conduct that resulted in the  
9 previous conviction.

10 **“SECTION 5.** ORS 163.185 is amended to read:

11 “163.185. (1) A person commits the crime of assault in the first degree if  
12 the person:

13 “(a) Intentionally causes serious physical injury to another by means of  
14 a deadly or dangerous weapon;

15 “(b) Intentionally or knowingly causes serious physical injury to a child  
16 under six years of age;

17 “(c) Violates ORS 163.175 knowing that the victim is pregnant; or

18 “(d) Intentionally, knowingly or recklessly causes serious physical injury  
19 to another while operating a motor vehicle under the influence of intoxicants  
20 in violation of ORS 813.010 and:

21 “(A) [*The person has at least three previous convictions for driving while*  
22 *under the influence of intoxicants under ORS 813.010, or its statutory*  
23 *counterpart in any jurisdiction, in the 10 years prior to the date of the current*  
24 *offense; or]* **In the 10 years prior to the date of the current offense the**  
25 **person has been convicted of at least three of any of the following of-**  
26 **fenses in any combination:**

27 **“(i) Driving under the influence of intoxicants in violation of ORS**  
28 **813.010, or its statutory counterpart in another jurisdiction.**

29 **“(ii) A driving under the influence of intoxicants offense in another**  
30 **jurisdiction that involved the impaired driving or operation of a vehi-**

1 cle, an aircraft or a boat due to the use of intoxicating liquor,  
2 cannabis, a controlled substance, an inhalant or any combination  
3 thereof.

4 “(iii) An offense in another jurisdiction that involved driving or  
5 operating a vehicle, an aircraft or a boat while having a blood alcohol  
6 content above that jurisdiction’s permissible blood alcohol content; or

7 “(B)(i) The person has a previous conviction for any of the crimes de-  
8 scribed in subsection (2) of this section, or their statutory counterparts in  
9 any jurisdiction; and

10 “(ii) The victim’s death or serious physical injury in the previous con-  
11 viction was caused by the person driving a motor vehicle.

12 “(2) The previous convictions to which subsection (1)(d)(B) of this section  
13 apply are:

14 “(a) Manslaughter in the first degree under ORS 163.118;

15 “(b) Manslaughter in the second degree under ORS 163.125;

16 “(c) Criminally negligent homicide under ORS 163.145;

17 “(d) Assault in the first degree under this section;

18 “(e) Assault in the second degree under ORS 163.175; or

19 “(f) Assault in the third degree under ORS 163.165.

20 “(3) Assault in the first degree is a Class A felony.

21 “(4) It is an affirmative defense to a prosecution under subsection (1)(d)(B)  
22 of this section that the defendant was not under the influence of intoxicants  
23 at the time of the conduct that resulted in the previous conviction.

24 **“SECTION 6. This 2021 Act being necessary for the immediate**  
25 **preservation of the public peace, health and safety, an emergency is**  
26 **declared to exist, and this 2021 Act takes effect on its passage.”.**

27